

[Cite as *State v. Weakley*, 2011-Ohio-304.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93282

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

GEORGE WEAKLEY

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Cuyahoga County Common Pleas Court
Case No. CR-504666, 511574, and 516933
Application for Reopening
Motion No. 436626

RELEASE DATE: January 24, 2011

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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Cuyahoga County Prosecutor

By: Diane Smilanick
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PATRICIA A. BLACKMON, J.:

{¶ 1} In *State v. Weakley*, Cuyahoga County Court of Common Pleas Case Nos. CR-504666, CR-511574 and CR-516933, Weakley pled guilty to: trafficking and tampering with evidence, CR-504666; escape, CR-511574; and aggravated robbery, felonious assault, aggravated burglary and having a weapon while under disability, CR-516933. On direct appeal, Weakley's appellate counsel assigned as error the trial court's denial of Weakley's motion to withdraw guilty plea. This court affirmed that judgment in *State v. Weakley*, Cuyahoga App. No. 93282, 2010-Ohio-2464. The Supreme Court of Ohio denied

Weakley's motion for delayed appeal and dismissed the appeal. *State v. Weakley*, 126 Ohio St.3d 1615, 2010-Ohio-5101, 935 N.E.2d 853.

{¶ 2} Weakley has filed with the clerk of this court a timely application for reopening pro se. He asserts that he was denied the effective assistance of appellate counsel because his appellate counsel did not assign as error that the facts do not support his convictions for aggravated burglary, having a weapon under disability and trafficking. We deny the application for reopening. As required by App.R. 26(B)(6), the reasons for our denial follow.

{¶ 3} Having reviewed the arguments set forth in the application for reopening in light of the record, we hold that Weakley has failed to meet his burden to demonstrate that "there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal." App.R. 26(B)(5).

In *State v. Spivey*, 84 Ohio St.3d 24, 1998-Ohio-704, 701 N.E.2d 696, the Supreme Court specified the proof required of an applicant. "In *State v. Reed* (1996), 74 Ohio St.3d 534, 535, 660 N.E.2d 456, 458, we held that the two-prong analysis found in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, is the appropriate standard to assess a defense request for reopening under App.R. 26(B)(5). [Applicant] must prove that his counsel were deficient for failing to raise the issues he now presents, as well as showing that had he presented those claims on appeal, there was a 'reasonable probability' that he would have been successful. Thus [applicant] bears the burden of

establishing that there was a 'genuine issue' as to whether he has a 'colorable claim' of ineffective assistance of counsel on appeal." *Id.* at 25.

{¶ 4} As noted above, Weakley pled guilty. Yet, in his application for reopening he challenges the accuracy of the facts stated during his colloquy with the trial court. "However, a 'plea of guilty is a complete admission of the defendant's guilt.' Crim.R. 11(B)(1). As such, we have held that '[a] guilty plea waives a defendant's right to challenge sufficiency or manifest weight of the evidence.' *State v. Hill*, Cuyahoga App. No. 90513, 2008-Ohio-4857." *State v. Moree*, Cuyahoga App. No. 90894, 2009-Ohio-472, ¶16.

{¶ 5} Clearly, if appellate counsel had assigned the error proposed by Weakley challenging the accuracy of the facts, Crim.R. 11(B)(1) and cases relying on it would have required that this court affirm the trial court's judgment. Weakley cannot satisfy either prong of the *Strickland* test. That is, appellate counsel was not deficient and Weakley was not prejudiced by the absence of this assignment of error. We must, therefore, deny the application on the merits.

{¶ 6} Weakley has not met the standard for reopening. Accordingly, the application for reopening is denied.

PATRICIA A. BLACKMON, PRESIDING JUDGE

MELODY J. STEWART, J., and
LARRY A. JONES, J., CONCUR